

CRIMINAL APPEAL No 921 of 1985

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? J

[illegible]

5. Whether it is to be circulated to the Civil Judge? : NO  
1 to 5: No

[illegible]

PATEL VIRJIBHAI CHATURBHAI

Versus

PATEL GOVINDBHAI G

Appearance:

MS DAXA R VYAS for appellant

MR BA SURTI for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 05/11/1999

ORAL JUDGEMENT

1. By means of filing this appeal under Section 378 of the Code of Criminal Procedure, 1973, the appellant-original complainant has challenged the judgment and order dated March 29, 1985 passed by the learned Judicial Magistrate, First Class, Dhangadhra, in

Criminal Case No.680 of 1983, wherein, the learned Judicial Magistrate acquitted the respondents Nos. 1 and 2 for the offences punishable under Sections 494 and 114 of the Indian Penal Code.

2. The appellant is the brother of Lalitaben. She was married with respondent No.1 prior to 10-15 years of filing of the complaint. It is the case of the appellant that marriage between respondent No.1 and his sister, Lalitaben, is subsisting. Even though marriage between respondent No.1 and Lalitaben is subsisting, respondent No.1 married respondent No.2, Savitaben, and, therefore, committed offences punishable under Section 494 of the Indian Penal Code. On the complaint of the appellant, charge was framed against respondents Nos. 1 and 2 for the offences punishable as stated above. The charge was read over and explained to the respondents. The respondents did not plead guilty to the charge and claimed to be tried. To prove the case against respondents Nos. 1 and 2, the appellant himself examined at Exh.11. One Ambaram Mavji was examined at Exh.20; wife, Lalitaben, was examined at Exh.44, and Ramjibhai Kevaldas was examined at Exh.148. Further statements of the respondents were recorded under Section 313 of the Code of Criminal Procedure, 1973. The case of respondent No.1 was that he had not legally married respondent No.2, Savitaben. On appreciation of the evidence led by the parties, the learned Judicial Magistrate, First Class, Dhangadhra, acquitted the respondents by the impugned judgment and order dated March 29, 1985, giving rise to the present appeal.

3. Mrs. Mamta Vyas, learned counsel for the appellant, submitted that respondent No.1 had married respondent No.2, even though marriage between respondent No.1 and Lalitaben is still subsisting. It is submitted that one child was also born out of the wedlock between respondent No.1 and Lalitaben and, therefore, respondents Nos. 1 and 2 have committed offences with which they were charged and the appeal be allowed.

4. Learned counsel for respondents Nos. 1 and 2 submitted that there was no evidence to prove that legally the marriage was performed between respondents Nos. 1 and 2 and the learned Judicial Magistrate has appreciated oral as well as documentary evidence and has committed no error in acquitting the respondents. This being an acquittal appeal, if two views are possible, one which leans in favour of the respondents should be accepted. It is further submitted that the learned

Judicial Magistrate had given specific finding that the appellant had not proved that respondents Nos. 1 and 2 had entered into legal marriage and, therefore also, the appeal be dismissed.

5. Learned counsel for the parties have taken me through the evidence on the record of the case.

6. In my view, there is no substance in any of the contentions urged on behalf of the appellant. The learned Judicial Magistrate has not committed any error in appreciating oral evidence of the witnesses examined by the appellants. There is no iota of evidence that the marriage between respondents Nos. 1 and 2 was solemnized legally so as to attract the provisions of Section 494 of the Indian Penal Code. In absence of evidence establishing that a legal and valid marriage was solemnized between respondents Nos. 1 and 2, it cannot be said that respondents Nos. 1 and 2 had committed offences punishable under Section 494 of the Indian Penal Code. Under the circumstances, it cannot be said that any error is committed by the learned Judicial Magistrate in acquitting the respondents of the offences with which they were charged. On overall appreciation of evidence, I am satisfied that there is no infirmity in the reasons assigned by the learned Judicial Magistrate for acquitting the respondents. Suffice it to say that the learned Judicial Magistrate has given cogent and convincing reasons for acquitting the respondents and the learned counsel for the appellant has failed to dislodge the reasons given by the learned Judicial Magistrate in order to convince me to take the view contrary to the one already taken by the learned Judicial Magistrate. Therefore, the acquittal appeal deserves to be rejected.

7. It would not be out of place to mention that respondent No.1 and Lalitaben, sister of the appellant, had taken customary divorce during pendency of this appeal and Lalitaben has been paid an amount of Rs.50,000/- towards her permanent alimony.

8. For the foregoing reasons, I do not find any substance in the appeal. The appeal, therefore, fails and is dismissed.

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(swamy)